

1 obviously drunk?

2 A. He was not standing with a white woman that was obviously
3 drunk.

4 Q. There was another officer present at the gas station,
5 correct?

6 A. Yes.

7 Q. And that was officer Jones.

8 A. Yes.

9 Q. Did that officer walk off with that woman?

10 A. Which woman? I said there wasn't a woman. There was a
11 woman at the Valero gas station that was not with Mr. Bhatnagar.

12 Q. There was a woman?

13 A. There was a woman in the gas station, but she was not
14 standing with your client, as you asked me. That's why I said
15 no.

16 Q. You didn't conduct any D.U.I. investigation on that person,
17 did you?

18 A. D.U.I., meaning driving under the influence?

19 Q. That's correct.

20 A. I did not witness her driving.

21 Q. You asked Mr. Bhatnagar if he had come from the bar across
22 the street, didn't you?

23 A. I don't recall asking him that.

24 Q. Do you remember telling him that on weekends you would see
25 a lot of drunk people at that gas station coming from across the

1 street?

2 Mr. Graber: Objection, relevance.

3 THE COURT: Overruled.

4 THE WITNESS: I don't remember saying that to him.

5 By Ms. Garrido:

6 Q. Now, at some point you took Mr. Bhatnagar back to the San
7 Ramon police station, correct?

8 A. Correct.

9 Q. And he was upset, wasn't he?

10 Mr. Graber: Objection, relevance, beyond the scope of
11 the hearing.

12 THE COURT: Overruled.

13 THE WITNESS: I don't know if he was upset.

14 By Ms. Garrido:

15 Q. Was he crying?

16 A. You know, I believe he was crying.

17 Q. Did you witness him using his cell phone at any point?

18 A. I let him use his cell phone, yes.

19 Q. Isn't it true that you told him, "Stop crying, it's only a
20 misdemeanor, and even though you look like a terrorist, I'm not
21 charging you for that"?

22 A. I didn't say that.

23 Q. Isn't it true you told him, "Boy, take it easy. You Asians
24 create a lot of trouble everywhere in the world and steal jobs
25 here"?

1 A. No, I didn't say that.

2 Q. Isn't it true that you yelled at him saying, "We're leaving
3 now, get going you terrorist"?

4 A. No; that's not true.

5 Q. Do you recall having any conversations regarding
6 Mr. Bhatnagar's ethnicity?

7 A. No.

8 Q. You sure about that?

9 A. Am I sure about that?

10 Q. Yes.

11 A. I don't recall having any conversations with Mr. Bhatnagar
12 about his ethnicity.

13 Q. Did you testify at Mr. Bhatnagar's DMV hearing?

14 A. I did.

15 Q. Do you recall telling the officer there, the DMV officer
16 there, that you did have conversations regarding Mr. Bhatnagar's
17 ethnicity?

18 A. I don't recall that.

19 Q. Would it refresh your recollection to hear your own
20 testimony on that day?

21 A. Yes.

22 Q. First I'm going to play the portion of the testimony you
23 began so you can identify whether in fact that is you. Can you
24 hear that?

25 A. Yes, ma'am.

1 Q. Is that you, officer?

2 A. Yes, ma'am.

3 THE COURT: Can we have it stipulated that the reporter
4 need not transcribe the tape?

5 Ms. Garrido: So stipulated.

6 Mr. Graber: Yes, Your Honor.

7

8 (Tape recording was played)

9

10 By Ms. Garrido:

11 Q. Is it your testimony still that you did not have any
12 discussions with Mr. Bhatnagar regarding his ethnicity?

13 A. I said I didn't recall, and this is how I remember it now.
14 Apparently a few months ago I thought I may have had a
15 conversation with him. So the testimony is the same, yes.

16 Q. Now after that DMV hearing, did you ever call Mr.
17 Bhatnagar?

18 A. No.

19 Q. You never called him in the middle of the night?

20 A. No.

21 Q. Never threatened him?

22 A. No.

23 Q. Never told him to watch his back?

24 A. No.

25 Q. Never told him he doesn't belong here?

1 A. No.

2 Q. On September 29, 2006 at about 2:00 a.m., did you see Mr.
3 Bhatnagar again?

4 A. I saw him again. I don't remember the date. Seems about
5 the time I saw him again.

6 Q. You saw him again in the Valero gas station, the same one?

7 A. No. It was near there.

8 Q. And you pulled him over, correct?

9 A. That is correct.

10 Q. And you pulled him over for making an illegal U-turn,
11 didn't you?

12 A. That is correct.

13 Q. And when you approached Mr. Bhatnagar's driver's side
14 window, isn't it true you said, "What the fuck are you doing in
15 San Ramon? I don't want to see you in San Ramon"?

16 A. I never said that, no.

17 Q. Isn't it true that he asked you what the problem was and he
18 told you he had been driving legally?

19 A. I don't recall what he said to me.

20 Q. Isn't it true that you said to him, "You're going to take
21 me to court. You can't do anything to me. I can take your ass
22 to jail any time. I can take you to jail right now"?

23 A. I didn't say that.

24 Q. You wrote him a ticket, correct?

25 A. Correct.

1 Q. You told him not to come back do San Ramon, didn't you?

2 A. No, I didn't say that.

3 Q. And moving back to May 20th 2006, you never issued a
4 citation to Mr. Bhatnagar for making an illegal U-turn, did you?

5 A. No, I didn't.

6 Ms. Garrido: Nothing further.

7

8 REDIRECT EXAMINATION

9 By Mr. Graber:

10 Q. Officer, why didn't you issue the defendant a ticket for
11 making an illegal U-turn on May 20th?

12 A. I was always trained to, if you pull somebody over for a
13 vehicle code violation and they end up being arrested for
14 driving under the influence, that we do not cite for the initial
15 vehicle violation, just mention it in the report.

16 Q. Is it mentioned in your report?

17 A. It is.

18 Q. Turning back to the events of that day, do you remember how
19 far you were behind the defendant when he made the illegal
20 U-turn?

21 A. I can't recall specifically. I was within 100 feet, maybe.

22 Q. What are the lighting conditions like on Bollinger Canyon
23 Road at one o'clock in the morning?

24 A. It's fairly well lit with street lights.

25 Q. Is it a well lit street compared to other streets at night,

1 or is it about as bright as it is during the daytime?

2 A. Sorry. I don't understand.

3 Q. Would you say that Bollinger Canyon Road is as bright as it
4 in the daylight, at one o'clock in the morning with street
5 lights?

6 A. No.

7 Q. Do the street lights have any color tinting to them?

8 A. White.

9 Q. Okay. You mentioned that there was a woman at the Valero
10 gas station during cross-examination. You mentioned she wasn't
11 with the defendant. However, do you recall about where she was
12 in the Valero gas station?

13 A. When I saw her, she was standing at this entry door to the
14 little mini mart connected to the Valero gas station.

15 Q. About how far away from Mr. Bhatnagar was that?

16 A. 20, 25, 30 feet.

17 Q. At some point did other officer who was with you that night
18 contact that woman?

19 A. I don't recall.

20 Q. You did speak to Mr. Bhatnagar that night?

21 A. Yes.

22 Q. Do you remember the exact conversation you had with him?

23 A. No.

24 Q. Is it unusual to forget portions of conversations you have
25 with people you're contacting?

1 A. Is it unusual to forget? No, it's not.

2 Q. Would you remember if you had referred to a person you
3 pulled over as a terrorist?

4 A. I would probably remember that.

5 Q. Is it your testimony today that you don't recall the
6 conversation with the defendant about his ethnicity, but that
7 one may have occurred; is that correct?

8 A. Yes.

9 Q. Nothing further.

10

11

RE-CROSS EXAMINATION

12 By Ms. Garrido:

13 Q. You just testified that you were within a hundred feet of
14 him when he made this alleged illegal U-turn, correct?

15 A. Yes.

16 Q. But weren't you where you marked your car when you saw him
17 make that turn?

18 A. I think that's -- you asked me to mark my car when I first
19 saw him -- and I was driving; so I was mobile and he was
20 stationary. I was closing in on him.

21 Q. You drove within a hundred feet of him?

22 A. I am saying within a hundred feet is when -- I was within
23 100 feet of him when he made the U-turn, not when I initially
24 saw him, which is where I marked.

25 Q. Were you driving in the right lane?

1 A. I don't recall.

2 Q. Were you proceeding into the lane behind him to turn also?

3 A. Well, I wasn't going to until I saw the U-turn. That's
4 when I decided to follow him.

5 Q. So you were going to continue westbound?

6 A. Well, if I can assume, there is nothing to go left on. I
7 wouldn't go left there. There is nothing back there to --
8 closed businesses.

9 THE COURT: The question is, had you not seen an
10 illegal U-turn, would you have continued westbound on Bollinger.

11 THE WITNESS: Well, I don't remember my train of
12 thought. I would say yes.

13 By Ms. Garrido:

14 Q. Okay. Earlier you testified unequivocally that you had not
15 had any conversation with Mr. Bhatnagar regarding his ethnicity,
16 didn't you?

17 A. Sorry. Say that again.

18 Q. You testified earlier that you had not had any conversation
19 with Mr. Bhatnagar regarding his ethnicity?

20 Mr. Graber: Objection, misstates the testimony.

21 THE COURT: Overruled.

22 THE WITNESS: If that's what you said I said.

23 Ms. Garrido: Nothing further.
24
25

1 REDIRECT EXAMINATION (FURTHER)

2 By Mr. Graber:

3 Q. Do you have a specific recollection of your response to
4 Miss Garrido's question, or basing it on her characterization?

5 A. I don't understand.

6 Q. Do you remember telling Miss Garrido unequivocally that you
7 did not --

8 THE COURT: Mr. Graber, the transcript will reflect
9 what his prior response was.

10 Mr. Graber: Nothing further, then.

11 THE COURT: Is the witness excused?

12 Mr. Graber: Yes, subject to recall.

13 THE COURT: Thank you, officer. That means you are
14 still under subpoena. If we need you we will contact you.

15 You're free to go.

16 THE COURT: Any other witnesses?

17 Mr. Graber: No, Your Honor.

18 Ms. Garrido: Defense calls Richard Ha.

19 THE CLERK: You do solemnly swear that the testimony
20 you shall give in the cause now pending before this Court, shall
21 be the truth, the whole truth, and nothing but the truth, so
22 help you God.

23 THE WITNESS: Yes, ma'am.

24

25

1 RICHARD HA,
2 called as a witness by the defense, was duly sworn, and
3 testified as follows;

4 THE CLERK: Be seated. State your name and spell your
5 first and last name, for the record.

6 THE WITNESS: My name Richard Ha, H-a.

7 Mr. Graber: May I have an offer of proof as to what
8 this witness will testify to?

9 Ms. Garrido: Yes. Mr. Ha works at the Valero gas
10 station and witnessed the entire event.

11 Mr. Graber: Okay.

12

13 DIRECT EXAMINATION

14 By Ms. Garrido:

15 Q. Good afternoon. Thank you for coming.

16 A. Yes, ma'am.

17 Q. Are you employed?

18 A. Yes, I am. Valero gas station. I have been working there
19 a year.

20 Q. Okay. Is that Valero in San Ramon?

21 A. Yes, ma'am.

22 Q. And is that on the corner of Bollinger Canyon Road and
23 Market Place?

24 A. Yes, ma'am.

25 Q. And were you working on May 20th 2006 at about 1:00 in the

1 morning?

2 A. Yes, ma'am.

3 Q. And did you see Mr. Bhatnagar pull in for gas at about that
4 time?

5 A. Yes.

6 Q. Was an officer right behind him?

7 A. At that time I went out to check the rest room, because
8 some of the -- from the bar -- customers from the bar -- the
9 gas station here, the bar there -- and a lot of people from the
10 bar come here to use the rest room, and some of the customers --
11 I went to the rest room and I saw him park in the station number
12 two, and I come back -- and before that I talk with the lady --
13 the girl -- I see she very drunk, and she asked me for a
14 cigarette, and at that time I don't have on me -- but I can't
15 take cigarettes from my store to give to. I say, "I can't," and
16 she left. She went out. At the time, I went out too. I
17 checked the rest room and I saw -- I think he talked with the
18 girl. Right -- he talked with the girl. The
19 girl, she was -- I think she asked him for money.

20 Q. So she was asking him for money?

21 A. Yes.

22 Q. When you first say him.

23 A. Yeah. She asked him cigarette, something, or -- but I
24 think he refused, and after that I saw the police arrive.

25 Q. But that was -- was that a couple of minutes later?

1 A. Yeah, couple of minutes later, I think so. I don't know
2 how long it was. I can say like two, three minutes, something
3 like that. I don't know.

4 Q. And did the officer have his emergency lights on on his
5 car?

6 A. You mean the light?

7 Q. Yes.

8 A. I don't know, no. I don't see it.

9 Q. And did you see the officer approach Mr. Bhatnagar?

10 A. I think he asked him something. He asked him he from the
11 bar or something.

12 Q. He asked if Mr. Bhatnagar had come from the bar across the
13 street?

14 A. Yes. And then I think he asked him did he have a drink. I
15 think he says yes.

16 Q. If you could just hold off for a minute and just respond to
17 the specific questions that I ask you, I'd appreciate that.

18 Were there any other officers besides the one that was
19 talking to Mr. Bhatnagar?

20 A. I think two officer.

21 Q. And do you know what the other officer was doing?

22 A. I think I saw that the girl -- I think she asked one
23 officer, but I don't know which one officer, for money for buy
24 cigarettes, something like that.

25 Q. Okay.

1 A. There were two officers.

2 Q. Okay. So one of the officers was talking to the woman and
3 the other one was talking to Mr. Bhatnagar?

4 A. Yes.

5 Q. Did you speak with Mr. Bhatnagar that night?

6 A. You mean before?

7 Q. Or on that night at all.

8 A. No, I don't think so.

9 Q. Did you know him at that point?

10 A. No.

11 Q. And you didn't actually speak to Mr. Bhatnagar 'till much
12 later, correct?

13 A. Yes.

14 Q. When was that?

15 A. You mean I talk with him?

16 Q. Yes. Did he come to your gas station after that night?

17 A. After that night.

18 Q. He came in to ask you if you had video surveillance, right?

19 A. He asked video, but I told him that the video outside --
20 I'm not sure, but I think it don't work. So I give him my
21 manager phone number to him to ask to get the video.

22 Ms. Garrido: Nothing further.

23

24

25

CROSS-EXAMINATION

1
2 By Mr. Graber:

3 Q. Mr. Ha, about -- let me rephrase. Did you see Mr.
4 Bhatnagar that night before he pulled into your gas station?

5 A. See him?

6 Q. Yes.

7 A. No.

8 Q. And you had mentioned that after Mr. Bhatnagar had pulled
9 in your gas station that night, about two or three minutes later
10 an officer came to the gas station and spoke to him, correct?

11 A. Yes.

12 Q. What were you doing in-between when you first saw
13 Mr. Bhatnagar and when the officer arrived?

14 A. I talk with one of the customers complain about rest room.

15 Q. So Mr. Bhatnagar pulled in your gas station, you spoke with
16 the customer about the rest room, and then the officer pulled
17 in; is that correct?

18 A. No. Then the customer left about a couple of minutes later
19 and then I saw him -- before that I would talk with somebody
20 came to the gas station complain about the rest room -- it was
21 locked -- and then I walk out to check the rest room and then I
22 saw him park in the gas station, number two.

23 Q. Okay. So you spoke to the customer, went outside to check
24 the bathroom, and that's when you saw Mr. Bhatnagar's car,
25 correct?